

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 15, 2012

To: The Commission
(Meeting of February 16, 2012)

From: Office of Governmental Affairs (OGA) – Sacramento

Subject: **SB 981 (Yee) – Public Utilities Commission: Executive Employees
As introduced: January 23, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

SB 981 would prohibit the Governor from appointing a Commissioner who had, during the preceding two years, been an employee or paid agent of a public utility regulated by the CPUC. This bill would similarly prohibit the Commission from hiring anyone who had worked for a regulated utility during the prior two years as executive employees (i.e. Executive Director, General Counsel, Commissioner's advisor or other staff in Commissioners' offices and other designated positions in the CPUC's executive offices. This bill would further prohibit any of these persons from going to work for a CPUC-regulated public utility for a period of two years after leaving CPUC employment. These appointment and hiring prohibitions would only apply to those appointed or hired beginning January 1, 2013; and the leaving office prohibitions would apply to persons who become executive employees after December 31, 2012.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

SB 981 should be opposed for the following reasons:

- 1) The bill addresses issues that are already addressed in current law and CPUC procedures. The Political Reform Act already contains multiple provisions to ensure adherence to strict ethical standards and protect against conflicts of interest. The Commission's Legal Division works to ensure strict adherence to all Political Reform Act provisions.
- 2) The bill restricts the pool of potential CPUC employees. While very few executive employees have traditionally come to the CPUC directly from employment with a regulated utility, those who have proved to be valuable additions to the Commission and demonstrated a strong commitment to public service.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill is not entirely clear as to whether current Commissioners are covered by the ban on working for a utility within two years after leaving the CPUC. This could require a clarifying amendment.

Proposed section 303.5(a)(4) refers to various positions in the “executive offices of the Commission”. Some of these positions are positions that are used widely throughout the CPUC (e.g. Public Utilities Regulatory Analyst). Therefore, it is important that there be a clear and common understanding of what is meant by the term “executive offices of the Commission”. An additional clarifying amendment might be required here as well.

DIVISION ANALYSIS (Legal Division):

Under the Political Reform Act, there are currently three prohibitions relating to post-CPUC employment of Commissioners and the other employees who are the subject of SB 981:

1. **The Permanent Ban:** Former Commissioners and employees may never work for pay for anyone other than the State of California on a covered proceeding in which they participated while at the CPUC. The covered proceedings are typically matters that involve specifically named parties. Supervisors are often deemed to have participated in a matter based on the activities of their subordinates (e.g. a Commissioner will typically be deemed to have participated in a matter on which his or her personal advisor worked).
2. **The One Year Ban:** Former Commissioners and employees generally may not appear before the Commission or lobby its staff for a period of one year after leaving the CPUC. (However, former Commissioners and employees during this one year period may be paid to assist others in making such appearances so long as they are not identified as assisting, and so long as the work is not prohibited by the permanent ban).
3. **Influencing Prospective Employment:** Commissioners and employees may not make, participate in making, or use their official positions to influence governmental decisions that would have specified impacts on a “prospective employer”. A prospective employer means a non-governmental employer that has offered the individual a job or, for example, interviewed the individual for a specific job. In essence, a prospective employer becomes an economic interest of the CPUC employee for purposes of the Political Reform Act.

The Political Reform Act also has a limited impact on the work that an individual can do *before* coming to the CPUC. The Political Reform Act generally prohibits public officials from making, participating in or using their positions to influence governmental decisions that may have a specified impact on their economic interests, including sources of

income. In looking at sources of income, the Political Reform Act generally looks at all income received during the preceding 12 months. However, the regulations of the Fair Political Practices Commission provide a “former employer” exception to this general rule. Under this exception, for example, an employee of a public utility may come directly from utility employment to work for the CPUC, without any resulting limitation on the scope of his or her work for the CPUC, so long as: all income from the utility was received by or accrued to the employee prior to the time he or she became a CPUC employee; the income was received in the normal course of the previous employment; and there was no expectation by the CPUC employee at the time he or she assumed office of renewed employment with the utility. This same exception applies to someone becoming a CPUC Commissioner. Thus, it is generally possible for a utility employee to come directly to the Commission without any limitation on his or her work, so long as the employee disposes of any utility stock. However, this former employer exception does not apply to someone who worked for the utility in a capacity other than employee (e.g. as an independent contractor).

PROGRAM BACKGROUND:

There has long been criticism of state and federal officials who move between government regulatory agencies and private employment. This “revolving door” presents a risk that the individual, while working for the government, may (1) still retain the point of view of his or her former employer and therefore act for the benefit of the regulated industry, rather than the public; and/or (2) take regulatory action that favors the regulated industry in the hope of getting better-paid employment in that industry after working for the government. Furthermore, even if there is no evidence that any particular individuals may in fact have acted in either of the ways described in the preceding sentence, public confidence in the regulatory agency may be compromised by the risk that individuals working at the agency might act in either of those ways.

The Political Reform Act was drafted to help address this issue. The CPUC maintains strict ethical standards and works closely with both current and former employees to ensure adherence to all Political Reform Act provisions.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

SB 981 is pending hearing in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: SB 981 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Yee

JANUARY 23, 2012

An act to amend Section 301 of, and to add Section 303.5 to, the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 981, as introduced, Yee. Public Utilities Commission: commissioners: executive employees.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The qualifications and tenure of members of the commission are set forth in the California Constitution. Existing law prohibits a commissioner from holding an official relation to or having a financial interest in a person or corporation subject to regulation by the commission and requires the commission to adopt an updated Conflict of Interest Code and State of Incompatible Activities.

Existing law provides for the comprehensive regulation of campaign financing, conflicts of interests of public officials, and lobbying. Existing law prohibits a designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency holding a position that entails the making, or participation in making, of decisions that may foreseeably have a material effect on any financial interest, and a member of a state administrative agency, for a period of one year after leaving office of employment, to act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office of employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

This bill would prospectively prohibit a commissioner or executive employee of the commission, as defined, for a period of 2 years after leaving the employment of the commission, from becoming an employee of, or, for compensation, acting as the agent for, a public utility subject to the regulatory authority of the commission pursuant to the Public Utilities Act. The bill would prospectively prohibit the commission from hiring, as an executive employee of the commission, any person who, in the previous 2 years, was an employee or agent, for compensation, of a public utility subject to the regulatory authority of the commission pursuant to the Public

Utilities Act. The bill would prospectively prohibit any person from holding the office of commissioner who, in the previous 2 years, was an employee or agent, for compensation, for a public utility subject to the regulatory authority of the commission pursuant to the Public Utilities Act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 301 of the Public Utilities Code is amended to read:

301. (a) The membership of the Public Utilities Commission, and the qualifications and tenure of the members of the commission are as provided in Section 1 of Article XII of the Constitution of this state.

(b) *No person shall hold the office of commissioner who, in the previous two years, was an employee or agent, for compensation, of a public utility subject to the regulatory authority of the commission pursuant to this part. This prohibition shall be applicable to those persons appointed by the Governor beginning January 1, 2013.*

SEC. 2. Section 303.5 is added to the Public Utilities Code, to read:

303.5. (a) For purposes of this section, an "executive employee of the commission" means all of the following persons:

(1) Any chief of staff, executive assistant, or administrative assistant I for a commissioner.

(2) The following advisors on the staff of a commissioner: any legal advisor or legal advisor II, rotational advisor, policy and planning advisor, energy efficiency and renewables advisor, technical advisor and technical advisor II.

(3) The executive director of the commission appointed pursuant to Section 308.

(4) The following employees of the executive offices of the commission: a deputy executive director, policy and planning advisor, director of governmental affairs, communications director, government program analyst, associate governmental program analyst, public utilities regulatory analyst, administrative assistant I.

(5) The attorney for the commission appointed pursuant to Sections 307.

(b) No commissioner, including the president, or executive employee of the commission shall, for a period of two years after leaving the employment of the commission, become an employee of, or, for compensation, act as the agent for, a public utility subject to the regulatory authority of the commission pursuant to this part. This prohibition shall be applicable to a person who becomes an executive employee of the commission after December 31, 2012.

(c) The commission shall not hire any person as an executive employee who, in the previous two years, was an employee or agent, for compensation, of a public utility subject to the regulatory authority of the commission pursuant to this part. This prohibition shall be applicable to persons hired as executive employees of the commission beginning January 1, 2013.